NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,	No. 05-50113
Plaintiff - Appellee,	D.C. No. CR-98-00605-RMT
v.	
LORENZO GOMEZ CHICHIL,	MEMORANDUM [*]
Defendant - Appellant.	

UNITED STATES OF AMERICA,	No. 05-50127
Plaintiff - Appellee,	D.C. No. CR-98-00606-RMT-01
v.	
LORENZO GOMEZ CHICHIL, a/k/a Lorenzo Gomez Chichill and "Silent" Alfredo Gomez,	
Defendant - Appellant.	

Appeal from the United States District Court
for the Central District of California
Robert M. Takasugi, District Judge, Presiding

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[*] This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

Submitted July 24, 2006[**]

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

Lorenzo Gomez Chichil appeals from the 180-month sentence imposed upon remand from this court. He was convicted by a jury of distributing cocaine base, in violation of 21 U.S.C. § 841(a)(1); conspiracy, in violation of 21 U.S.C. § 846; and illegally carrying a firearm in relation to a drug trafficking offense, in violation of 18 U.S.C. § 924. We have jurisdiction under 28 U.S.C. § 1291, and we vacate and remand for resentencing.

Chichil contends on appeal, as he did at the de novo resentencing, that the mandatory minimum sentence of 120 months under 21 U.S.C. § 841(b)(1)(A) was unconstitutional because the sentence imposed was based on judge-found facts regarding the quantity of drugs involved. We agree. The district court's use of a statutory sentencing range that exposed Chichil to a higher maximum than that permitted by the jury's finding violated *Apprendi v. New Jersey*, 530 U.S. 466 (2000). *See United States v. Velasco-Heredia*, 319 F.3d 1080, 1085 (9th Cir. 2003).

VACATED and REMANDED.

[**] This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

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